

October 14, 2004

Hon. Joel I. Klein
Chancellor
New York City Public Schools
Department of Education
52 Chambers Street, Room 314
New York, NY 10007

Re: TransCare New York, Inc.
SCI Case #2004-0751

Dear Chancellor Klein:

An investigation conducted by this office has found that TransCare New York, Inc., (“TransCare”), a Department of Education (“DOE”) vendor that provided ambulance service to and from school for disabled students, has utilized non-certified drivers.¹ Moreover, a number of TransCare drivers and Emergency Medical Technicians (“EMTs”) who transported students have criminal records. Additionally, the DOE failed to monitor ambulance drivers to ensure that they were certified. Instead, officials at the relevant offices within the DOE each maintained that the other had responsibility for ambulance employees.

This office self-initiated an investigation in March 2004, in order to explore the circumstances surrounding the awarding of the DOE contract for ambulance service to TransCare.² While conducting this investigation, this office learned from a confidential source that TransCare had uncertified drivers transporting disabled students to and from schools in ambulances.

¹ TransCare was removed from service during the term of the emergency contract extension now in effect, as a result of this investigation. However, TransCare was eligible to bid for the contract proposed for January 2005.

² The ambulance contract expired on June 30, 2002 and is now under emergency extension through December 2004.

Article 19-A of the New York State Vehicle and Traffic Law requires that before hiring a new bus driver, a motor carrier shall “request...a criminal history check for persons employed as school bus drivers.” Ambulances that transport students to and from school are considered school buses based on Vehicle and Traffic Law section 142, which defines a school bus as a motor vehicle that is “operated for compensation for the transportation of pupils...to or from school or school activities.” Drivers are also required to undergo biennial medical examinations, annual driving record checks, regular observation of defensive driving performance, a biennial behind-the-wheel driving test, and biennial written or oral examinations testing knowledge of the rules of the road, as well as defensive driving practices and the laws regulating driving a bus in New York State.

Further, in its contract with the ambulance companies, the DOE required even stricter qualifications for drivers to become certified. According to that ambulance contract, potential drivers had to have a clean driving record and undergo a thirteen county criminal history check. If the record search revealed no conviction, then the driver could begin the conditional certification process. To be conditionally certified, the driver appeared at the Office of Pupil Transportations (“OPT”) with a letter of introduction from the company and a copy of the letter approving conditional certification, fingerprint receipt, drug/alcohol test results, abstract, medical, pre-service training, handicapped training, “refresher,” three letters of reference, and a driver physical performance test certification. If all that was met, the driver was able to operate the ambulance conditionally while awaiting final fingerprint clearance. Additionally, according to the former ambulance contract, EMTs also had to be certified to be on an ambulance with a student. The EMT certification included a thirteen county criminal history check. After clearance, the EMT submitted to the Office of Purchasing Management (“OPM”) a letter of introduction, a copy of the EMT certification, a copy of his/her social security card, medical clearance and the thirteen county clearance affidavit. After receipt of these items, OPM gave the EMT a letter of approval for fingerprint processing at 65 Court Street.

This office learned that most of the TransCare employees who serviced the DOE contract were not certified. A list of TransCare employees provided by the company showed 360 people who worked as drivers, EMTs, or paramedics under the DOE contract between January 1, 2004 and June 18, 2004. However, the DOE had a record of only thirteen certified TransCare employees. Further, Karen Hughes, TransCare’s operations coordinator told investigators that five of the thirteen either no longer worked for TransCare or were no longer involved in servicing the DOE contract. Moreover, criminal

background checks done by this office on the 360 individuals revealed that 25 had criminal convictions.³ These convictions were for:

- Manslaughter 1st degree (TransCare driver was sentenced to 8 ½ to 25 years in prison. He was released from prison in 1995 and is currently on parole);
- Criminal possession of a loaded firearm (CPW 3rd degree);
- Driving While Under the Influence of Alcohol (two TransCare employees);
- Attempted Murder and Use of a Firearm to Cause Great Bodily Injury (in California) (TransCare EMT was sentenced to seven years in prison, and was paroled after three in 1990);
- Unauthorized Use of a Motor Vehicle;
- Assault 3rd degree (two TransCare employees);
- Attempted Assault 3rd degree (two TransCare employees);
- Criminal Possession of Marijuana 4th degree (two TransCare employees);
- Petit Larceny (two TransCare employees);
- Criminal Possession of a Weapon 4th degree;
- Attempted Criminal Possession of a Weapon 4th degree;
- Passing a False Check (in Oklahoma);
- Felony Possession Handgun, Possession Assault Firearm (in New Jersey);
- Carrying a Concealed Weapon (in Virginia);
- Drug Possession (in Minnesota);
- Attempted Welfare Fraud 4th degree (TransCare driver pleaded guilty in 2002 and was sentenced to three years probation through July 28, 2005).

Several employees had multiple criminal encounters:

- One TransCare attendant had seven convictions between 1995 and 2002 for Petit Larceny, Attempted Petit Larceny, and Criminal Possession of Stolen Property 5th degree;
- One TransCare driver pleaded guilty to Attempted Criminal Possession of Stolen Property 3rd degree and received a relief from civil disabilities which may have allowed him to retain his certification. However, he later pleaded guilty to Attempted Criminal Mischief 4th degree and in 1995 he pleaded guilty to Grand Larceny 4th degree for which he was sentenced to 18 months to three years in jail.
- Another TransCare driver pleaded guilty in 1995 to Unauthorized Use of a Motor Vehicle. Then, as recently as 2003, he pleaded guilty to Criminal Mischief 4th degree.

³ We were able to confirm that fourteen actually did DOE runs through the Ambulance Call Reports provided by TransCare. The other eleven either shared a name with others listed by the company as working under the DOE contract, and we were unable to confirm it was that individual on the Ambulance Call Report, or while the person was on the company's list, they were not listed on an Ambulance Call Report as having been part of a run. An Ambulance Call Report is a form required by the State to be filled out by an EMT for each run. It is not a DOE form.

- Another TransCare driver pleaded guilty in 1990 to Attempted Criminal Possession of a Weapon 4th degree. Then, in 2000, after another arrest, he pleaded guilty to Criminal Possession of a Controlled Substance 7th degree. As a result, his driver's license was suspended for six months.
- Another TransCare driver pleaded guilty to Attempted Burglary 3rd degree, two years later pleaded guilty to Unauthorized Use of a Motor Vehicle 3rd degree, the next year pleaded guilty to Criminal Trespassing 3rd degree, and finally pleaded guilty to Menacing and Driving While Under the Influence of Alcohol.

Officials at OPT and OPM each named the other when asked to explain which department was responsible for keeping track of certified ambulance drivers and ensuring that the actual drivers were certified. OPT admitted involvement in the certification process, but denied responsibility for monitoring drivers. OPT asserted that at some point in the past "someone," although no one could say who, made a distinction between yellow school buses and ambulances. Consequently, OPT would monitor school bus drivers, but not ambulance drivers.

According to everyone we spoke to at OPT, that office was also responsible for random inspections of yellow bus drivers to confirm certification. Monitors would go out and meet a bus during its run or at the site of a field trip and require the bus driver to show his or her DOE identification card. If a bus driver was not certified, he or she would be pulled off the bus immediately, the company would have to send out a certified driver, and the company would be fined. However, by the OPT staff's own admission, OPT never did random spot checks of ambulance drivers. Every OPT witness maintained that it was never OPT's responsibility and some suggested that monitoring of ambulance driver certification was done by OPM. However, according to Clare Gallagher, purchasing agent for the ambulance contract at OPM, that office would never handle the monitoring of drivers; instead that responsibility fell to OPT. Ultimately, Martin Oestreicher, Chief Executive of School Support Services, which includes OPT, and Louis Benevento, Executive Director of the Division of Financial Operations, which includes OPM, each acknowledged deficiencies in their offices and admitted that the monitoring of ambulance drivers was not done.⁴

As a result, TransCare was free to use anyone as a driver or EMT, and no one at the DOE ever knew who was driving or riding with the public schoolchildren being transported by ambulance. While, under the law, both yellow bus drivers and ambulance drivers are considered school bus drivers and must be State certified, in addition to the mandates set forth in their respective contracts, OPT monitored yellow bus drivers, but inexplicably did not monitor ambulance drivers.

⁴ This is not the first time this office has found OPM and other departments within the DOE unsure of their responsibilities. See SCI *Food Purchasing Procedures* letter to Chancellor Klein dated February 4, 2004. SCI Case #2002-2380.

The simple task of going out to monitor drivers to confirm certification would have helped to ensure that students were driven and escorted by individuals who had the proper training and credentials, and also no criminal record. Approximately fifty students were transported by ambulance, thus the task of conducting spot checks of driver certification would not be time consuming, and could have been done with relative ease. In fact, investigators from this office, based on locations listed on the Ambulance Call Reports, went to three schools and waited for the ambulances to arrive. The investigators then requested the identification of the drivers and EMTs. Based on this simple spot check, we were able to determine that seven out of eight were not certified to be driving or escorting students on an ambulance.⁵

OPT also failed to ensure that drivers who transported students were not using drugs. OPT was responsible for arranging random drug testing for yellow bus drivers, as required by contract. However, it never monitored or arranged random drug tests for ambulance drivers, despite the fact it was part of that contract as well. According to the ambulance contract, drivers were supposed to be a part of a random drug pool. However, according to Susan Smith, the principal administrative associate in the investigations unit at OPT, who was responsible for organizing random drug testing of yellow bus drivers, ambulance drivers were never part of the pool. She could not explain why a distinction was made between yellow bus drivers and ambulance drivers. Further, according to OPT director Richard Scarpa, he was not aware that random drug testing was a part of the ambulance contract because, before he was questioned by SCI investigators, he had never seen the ambulance contract. Additionally, Stacy Greenberg Popkin, former head of the contract compliance unit at OPT, also confirmed that OPT did not perform random drug tests on ambulance drivers.

No one at OPT was able to explain why ambulance drivers were treated differently than yellow bus drivers. All conceded that both are required to be 19-A certified and both have additional requirements mandated by their DOE contracts. Yet, ambulance drivers have never been monitored the way yellow bus drivers are. Further, bus drivers were given DOE photo identification cards upon certification so they were identifiable upon inspection, yet ambulance drivers were not given any sort of photo identification.

When this office became aware that individuals with criminal histories were driving DOE students in ambulances, we notified the DOE immediately. As a result of this notification, we have been told that changes are being made. In a letter to this office, dated September 22, 2004, Richard Scarpa stated that OPT has informed the ambulance companies of the process for random drug testing to which they will now be subject. Further, according to the letter from Scarpa, OPT will now perform certification verification inspections on ambulance drivers. Additionally, certified ambulance drivers, like bus drivers, will now be issued DOE identification cards.

⁵ At one school, the driver and escort stopped were not the regular staff on that ambulance run. Investigators determined that neither the substitutes nor the regular driver and escort were certified.

Additionally, according to Maryann Knab, Deputy Administrator for OPM, her office will also be more closely monitoring ambulance drivers. Regular checks will be done to compare the names on the ambulance companies' lists of certified drivers with the names of the drivers and EMTs actually doing the runs. Additionally, the new contract will specifically assess liquidated damages for a company found to be using a driver who is not certified.⁶

In order for Knab to be able to do comparisons, the forms turned into the DOE by the ambulance companies need to be changed. The DOE transportation verification forms used by the ambulance companies for billing do not have an entry for the name of the driver or EMT. It was only because TransCare made a special request to use for billing purposes the Ambulance Call Reports that the EMTs are required to fill out, that this office was able to track the drivers and EMTs who actually did the runs.

Despite the fact that the DOE has stated that changes are being made to ensure that students are transported by certified drivers, we found that is still not true. Currently, there are forty-nine students transported to school by ambulance. Nine are handled by Citywide Ambulance Service ("Citywide"), twenty-nine are driven by American Medical Response ("AMR"), and eleven are driven by Richmond County Ambulance ("Richmond County"). However, according to Brian Nolan, senior investigator at OPT, Citywide has no certified drivers, AMR has eight, and Richmond County has five.⁷ Clearly, these companies are using non-certified drivers to transport disabled students to school. According to Clare Gallagher from OPM, "management is aware that the DOE is using non-certified ambulance drivers to transport students," the process of certifying ambulance drivers is time consuming and complex, and there is a lot of paperwork involved. She asserted that the only option would be to tell children that they cannot go to school. According to Gallagher, OPT has always been responsible for the certification of new drivers. She added that, since June 2004, when this office notified the DOE regarding the problems with drivers without proper certification, OPT has been processing new drivers, but has not been able to do so quickly enough. For his part, Nolan asserted that OPT handles the certification paperwork but it is OPM's responsibility to make sure the individuals driving students are certified. It is clear that regardless of the fact that the DOE claimed that changes are on the way, students are still being transported by non-certified drivers.

⁶ Liquidated damages are defined in the new contract as a fixed sum agreed upon by the parties of damages the DOE or City will suffer by reason of violation of the agreement. Vendors have a ninety day grace period to get their drivers certified. Thereafter, liquidated damages will be assessed at \$100 per driver for up to sixty days. If the certification is not completed after sixty days the amount of liquidated damages increases to \$150 per driver for the next thirty days. If after that, drivers are still uncertified, the vendor may be charged \$100 per day per driver.

⁷ The New York State Department of Motor Vehicles has no school certified drivers on record for Citywide, twelve for AMR, and three for Richmond County.

Another area of concern is the fact that the background checks on potential ambulance drivers conducted by OPT are not thorough enough. Two individuals who went through the background check process for certification were approved for conditional certification despite having criminal histories.⁸ While one revealed a conviction for Driving Under the Influence in Virginia on his application, he omitted a concealed weapon conviction also in Virginia. However, since OPT only does New York State thirteen county checks, it never discovered the weapons conviction. The other individual denied on his application that he was ever convicted of any criminal offense when, in fact, he pleaded guilty to passing a false check in Oklahoma. Again OPT could not have discovered this conviction based on the New York thirteen county check. OPT does fingerprint potential drivers, but, according to Brian Nolan, when a person is 19-A certified, the fingerprint record goes from the Department of Motor Vehicles to the company and simply indicates whether they are certifiable or not. It does not reflect the person's record and therefore, the DOE officials never see the actual criminal history. While the Department of Motor Vehicles may approve a person for certification, it does not necessarily mean the DOE would approve that individual, but the DOE can only base its decision on what is received from Motor Vehicles.

It seems that many children who were least capable of protecting themselves were left vulnerable and alone in an ambulance with a driver and a technician whose backgrounds were unknown, and for years the DOE did nothing to ensure that the companies it contracted with were upholding the requirements of the contract.⁹ Moreover, TransCare violated State law and its contract with the DOE by using ambulance drivers and EMTs who were not properly certified, some of whom had criminal convictions. TransCare also failed to comply with its duties as a motor carrier under Vehicle and Traffic Law section 509.¹⁰ Therefore, it is the recommendation of this office that TransCare be removed from the list of approved vendors with the DOE, and be disqualified from bidding on any future ambulance contracts. Further, we are forwarding a copy of this letter to the New York State Department of Motor Vehicle for whatever action it deems appropriate.

Additionally, while it appears that the DOE has begun to implement changes in order to properly monitor ambulance drivers and ensure that only certified drivers are used, it is the recommendation of this office that specific offices be given specific responsibilities regarding the monitoring process, and thereafter held responsible for any failures of the new system. Further, the DOE has to perform more thorough background checks so eligibility decisions can be made with all the information on the criminal

⁸ Neither followed up and completed the certification process, but that did not stop them from working for TransCare.

⁹ Some students travel with either a DOE nurse or a Medicaid nurse.

¹⁰ VTL section 509 specifies a myriad of requirements for motor carriers. TransCare failed to comply with most of them for hundreds of its employees.

history of an applicant. It must reach out to the Division of Criminal Justice Services, the agency responsible for processing the fingerprints, and the Department of Motor Vehicles and work out a way to obtain the full criminal history on each applicant.¹¹ This is the only way the DOE can ensure that individuals without criminal records are transporting these students. Just because the Department of Motor Vehicles deems someone fit for 19-A certification does not mean that they are fit to work for the DOE. Finally, the DOE must streamline the certification process so that the staff who handle the assignment of drivers to students know their certification status. There must be accountability to ensure that students are being driven by certified drivers.

We are forwarding a copy of this letter to the Office of Legal Services. Should you have any inquiries regarding the above, please contact Vicki Multer Diamond, the attorney assigned to the case. She can be reached at (212) 510-1454. Please notify Ms. Multer Diamond within thirty days of receipt of this letter of what, if any action has been taken. Thank you for your attention to this matter.

Sincerely,

RICHARD J. CONDON
Special Commissioner
of Investigation for the
New York City School District

By: _____

Regina A. Loughran
First Deputy Commissioner

RJC:RAL:VMD:gm

c: Michael Best, Esq.
Theresa Europe, Esq.
Rick Stewart, Esq.

¹¹ According to Thomas Fullington, the Director of Program Oversight at the Department of Motor Vehicles, an agreement between the Department of Criminal Justice Services and the Department of Motor Vehicles prohibits the Department of Motor Vehicles from sharing the criminal information.